



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.03.2020

PRONOUNCED ON : 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**CRP (PD) (MD) No. 643 of 2014andM.P. (MD) No. 1 of 2014

WEB COPY

1. Suresh
2. Sornam Ponnu @ Mercy ... Revision
Petitioners/Defendants
versus
Thiraveyam ... Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 12.08.2013 made in I.A.No.246 of 2013 in O.S.No.105 of 2010 on the file of the learned Principal District Munsif, Padmanabhapuram.

For Revision Petitioners : Mr.K.N.Thampi

For Respondent : Mr.R.Vijayakumar

ORDER

The revision petitioners are the defendants in O.S.No.105 of 2010 on the file of the learned Principal District Munsif, Padmanabhapuram. The respondent herein is the plaintiff.

2. The plaintiff/respondent herein filed a suit in O.S.No.105 of 2010 before the learned District Munsif, Padmanabhapuram, seeking a decree for demarcation and putting up the eastern and western boundary of the suit property as per the sale deed through Court and also for permanent injunction restraining the defendants and their men from trespassing into the suit property and disturbing his peaceful possession and enjoyment over the same.

3. The first defendant/first respondent has also filed a written statement in the said suit. While so, the plaintiff/respondent herein filed an Interlocutory Application in I.A.No.246 of 2013 in O.S.No.105 of 2010, under Order VI Rule XVII C.P.C. seeking to amend the plaint stating that the defendants removed the soils from the suit property and sold the same to the strangers and thereby, caused damages for a sum of Rs.20,000/- and hence, a relief, for recovery of Rs.20,000/- towards damages, is necessary to be added.

4. Resisting the same, the defendants/revision petitioners filed a counter. The trial Court, after hearing both sides, by

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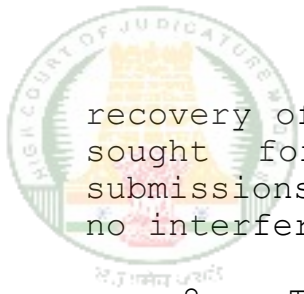


order dated 12.8.2013, allowed the said application. Aggrieved over the same, the defendants has filed the present Civil Revision Petition.

5. Heard Mr.K.N.Thampi, learned counsel for the revision petitioners/defendants and Mr.R.Vijayakumar, learned counsel for the respondent/plaintiff.

6. Mr.K.N.Thampi, learned counsel for the revision petitioners/defendants submitted that by way of this amendment, the plaintiff has changed the very suit property itself and the southern boundary, originally mentioned as road, is now introduced as a private person's property and this amendment also changes the very nature and character of the suit and introduces a new plaintiff. The learned counsel further submitted that the application for amendment of plaintiff was filed after filing the written statement in the suit and based on the Commissioner's report, the plaintiff does not give any cause for amendment of plaintiff and the plaintiff has not assigned any reasons for filing the said application and also not stated any details of the alleged purchaser of the soil and the vehicles used for removing the soil and the quantum of soil allegedly removed and the action taken by him. In the absence of any reasons and details in the accompanying affidavit, the trial Court has erred in allowing the said application. Therefore, he sought for interference of this Court. In support of his contention, the learned counsel has relied upon a decision of this Court reported in **2006 (1) CTC 288 (Ramaswamy and others vs. The Ezhudesom Town Panchayat, rep. by its Executive Officer, Kanjampuram Post, Ezhudesom Village, Vilavancode Taluk, Kanyakumari District)**.

7. Mr.R.Vijayakumar, learned counsel for the respondent/plaintiff submitted that the suit was originally filed for a decree for demarcation and putting up the eastern and western boundary of the suit property as per the sale deed and also for a permanent injunction, based on his sale deed dated 04.01.2006. In the written statement, the defendants questioned the title over the suit property, for which, a Commissioner was also appointed and the Commissioner issued a notice for visiting the property on 29.01.2012 and after knowing the same, the defendants removed the soil from the suit property with JCB vehicle and also removed certain things and sold the same to the strangers. Pursuant to the same, the plaintiff has also lodged a complaint before the Karungal Police Station. Further, the plaintiff, during the Commissioner's visit, also gave a memo to the Commissioner to note down and report the soil removed by the defendants from the plaintiff's property and also to assess the valuation of the soil removed. Accordingly, the Commissioner has also assessed the valuation of the soil removed and in her report, she assessed the valuation of the soil removed as Rs.20,000/- and this amount is entitled to be recovered from the defendants towards damages and therefore, the amendment application was filed for



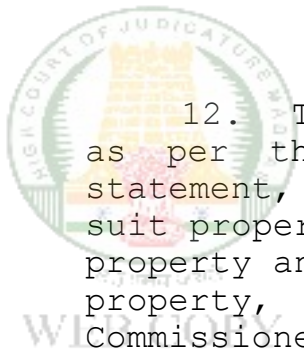
recovery of money towards damages in addition to the relief already sought for. The trial Court, after considering the rival submissions, has rightly allowed the said application. Therefore, no interference is required.

8. This Court paid its anxious consideration on the rival submission made and also perused the records.

9. The respondent/plaintiff purchased the suit property, by a registered sale deed, dated 04.01.2006 and he is in possession and enjoyment of the suit property. The properties on the eastern side and western side of the suit property belong to the defendants and they purchased the said property from the plaintiff's vendor. Since there was no boundary, which caused difficulty to the plaintiff in enjoying the property, the plaintiff tried to put up boundary on the eastern and western side of the suit property and the same was objected by the defendants. Hence, the plaintiff filed the above suit before the District Munsif Court, Padmanabhapuram, seeking a decree for demarcation of the property on the eastern and western boundary of the suit property as per the sale deed through Court and also for permanent injunction, restraining the defendants and their men from trespassing into the suit property and disturbing him from his peaceful possession and enjoyment of the suit property.

10. The revision petitioners/defendants filed a written statement contending *inter alia* that no property is available or lying on the land as scheduled in the suit and that the plaintiff or his alleged vendor has got no manner of right, title, possession or enjoyment of any portion in the suit property.

11. Pending the suit, the plaintiff/respondent herein has filed an Interlocutory Application for appointment of Commissioner and the Commissioner, appointed by the Court, issued a notice of inspection to the respective Advocates on 20.01.2012 fixing the date of visit on 29.01.2012 and on 25.01.2012, the defendants said to have removed the soil from the suit property with JCB vehicle and he also lodged a complaint before the Karungal Police Station. During the Commissioner's visit, the plaintiff has also given a memo to note down and assess the soil removed from the suit property. The Commissioner, in her report, has also noted down the same and assessed the valuation of soil removed as Rs.20,000/- and thus, the amount is entitled to be recovered towards damages. Therefore, the Interlocutory Application in I.A.No.246 of 2013 has been filed seeking to add two more relief, namely, for a decree of declaration of his title over the suit property and also for recovery of damages of Rs.20,000/- along with the other two relief already sought for in the suit, namely, a decree of permanent injunction, restraining the defendants and their men from trespassing into the suit property and also for demarcation and putting up the eastern and western boundary of the suit property as per the sale deed.



12. Though the suit is filed for demarcation of the property, as per the sale deed, the defendants, by filing the written statement, has raised an objection with regard to the title over the suit property and pending the suit, the Commissioner has visited the property and prior to his visit, soil has been removed from the suit property, for which, criminal complaint has been lodged and the Commissioner, in her report, has also noted down the worth of soil removed from the suit property as Rs.20,000/- and accordingly, he sought for the relief of damages also.

13. As per the provisions under Order VI Rule 17 of C.P.C., the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

14. Further, the Hon'ble Apex Court, in the case of **Mount Mary Enterprises v. Jivratna Medi Treat (P) Ltd**, reported in **(2015) 4 SCC 182**, held that:

"...as per the provisions of Order 6, Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant..."

15. In view of the above, the trial Court has rightly allowed the application for amendment and there is no reason to interfere with the order of the trial Court.

16. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Principal District Munsif, Padmanabhapuram.

+1cc to Mr.K.N.Thampi, Advocate Sr.No.27207

Order passed in
CRP (PD) (MD) No.643 of 2014
23.12.2020